

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

STEPHEN D. CAIAZZO,
Plaintiff

v.

THE MEDALLION INSURANCE
AGENCIES, INC.,
Defendant

CIVIL ACTION NO.
04-12627 RCL

PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION FOR SANCTIONS

The defendant, Medallion Insurance Agencies, Inc. (“Medallion”) has filed a motion for sanctions as a result of having to file an opposition to plaintiff’s motion for relief from summary judgment on his claim for property loss. The plaintiff Stephen D. Caiazzo (“Caiazzo”) hereby opposes Medallion’s motion for sanctions.

Medallion alleges that plaintiff’s motion for relief from judgment is frivolous, that it is based on either deliberate misstatements of fact or new statements of fact which should have been produced before the summary judgment motion.

Caiazzo’s motion for relief is not frivolous. A careful reading of the motion, the Affidavit of Caiazzo, the attached exhibits to the Affidavit and the memorandum in support thereof show that Caiazzo is entitled to relief pursuant of Rule 60(b). In addition, there are no misstatements of fact and there are no new statements of fact that should have been produced earlier.

As set forth in Caiazzo’s memorandum in support of his motion for relief from summary

judgment, the date of loss for his property was not mentioned in Medallion's summary judgment materials and did not come up until the oral argument on Medallion's summary judgment motion. If Medallion had discussed the date of loss in its summary judgment materials, or had incorrectly stated the date of loss, Caiazzo would have produced the documents in his opposition to the summary judgment motion. Caiazzo could not have anticipated that he would have to establish the date of loss for summary judgment purposes. This only became apparent at oral argument when defense counsel misstated the date of loss to be on September 1, 2001 or sometime in September 2001.

The two exhibits attached to Caiazzo's affidavit were exhibits at the trial of case against a bank and a real estate company in which he recovered for part of his property loss. These documents were produced by those defendants shortly before the trial in December 2005. These documents were not relevant to this case and were not produced until defense counsel misstated the date of loss.

Thus, Caiazzo's motion for relief from summary judgment is not frivolous, does not contain misstatements of fact and the exhibits to Caiazzo's affidavit should not have produced before summary judgment.

WHEREFORE, plaintiff requests this Court to deny defendant's motion for sanctions.

By Plaintiff's Attorney,

DEAN CARNAHAN
BBO #074580
LAW OFFICES OF DEAN CARNAHAN
51 Newcomb Street
Arlington, MA 02474
(781) 641-2825

Dated: October 17, 2006

CERTIFICATE OF SERVICE

I, Dean Carnahan, hereby certify that on this day this document(s) filed through the ECF system will be sent electronically to the registered participants on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

Date: October 17, 2006

/s/ Dean Carnahan

DEAN CARNAHAN

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